

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 612 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHUPENDRA M MEHTA

Appearance:

MR BY MANKAD, ADDL PUBLIC PROSECUTOR for appellant

MR CH VORA for Respondent

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 08/10/98

ORAL JUDGEMENT

This appeal is preferred by the State, being aggrieved by an order of acquittal recorded on 29.4.1991 by Judicial Magistrate, First Class, Nakhtrana, Kutch in Criminal Case No. 171 of 1988, wherein the accused were tried for an offence under section 7 of the Prevention of Food Adulteration Act [hereinafter referred to as the Act] punishable under section 16(1)(a)(i) of the Act.

2. Food Inspector Liyakatali, PW. 1, appointed as such vide Government gazette produced on record at Exh. 8, has stated in his deposition Exh. 7 that on 30.11.1987 he visited the shop of the accused dealing in the name of M/s. Surendrakumar & Company situated at Nakhtrana, and after soliciting services of panchas and after giving intimation, collected the sample of groundnut oil from the accused; The sample was collected by means of a steel bowl which was clean and dry; Thereafter the same was poured into three dry and clean bottles which were thereafter closed by means of cork so as to prevent leakage and to prevent entry of moisture into the bottle; Thereafter seals were applied in accordance with the rules; One sample was forwarded on the next day with a memorandum, form No. VII to the Public Analyst for analysis; The Public Analyst opined in his report, exh.19, that the sample of food, viz. ground nut oil, was not in accordance with the standard laid down under the Prevention of Food Adulteration Rules [hereinafter referred to as the Rules]. Thereafter, on getting the consent, Food Inspector launched the prosecution against the accused and sent the intimation to the accused along with a report of Public Analyst as contemplated under section 13 (2) of the Act.

3. It appears that the accused requested the Court to forward one sample to the Central Food Laboratory for analysis. Central Food Laboratory, on analysis, opined that the sample did not conform to the standard of groundnut oil as laid down under item No. A.17.03 of the Rules; B.R. Reading and Iodine value were above the maximum prescribed limits; Bellier Turbidity temperature was less than the minimum prescribed limit. The Central Food Laboratory, therefore, opined that the sample was adulterated.

4. The trial Court, considering various contentions raised by the accused, acquitted the accused.

5. This Court is not in agreement with all the views expressed by the trial Court in its judgment. However, suffice it to say that the learned advocate has satisfactorily pointed out that while collecting the sample, the Food Inspector has collected the same in violation of the Rule 14 of the Rules. He further submitted that the trial Court, while forwarding the sample to the Central Food Laboratory has forwarded the same in breach of rule 4 of the Rules and no reliance can be placed on the analysis report. He further submitted that the valuable right given to the accused has been denied in this manner, and, therefore, acquittal should

be confirmed.

6. From the report of the Central Food Laboratory, it is clear that the Central Food Laboratory has mentioned the condition of the seals on the container and the outer cover on receipt, as under :-

"The seals on sample container were intact and tallied with the specimen impression of seal given in copy of Form VII. The seals on outer cover of sample parcel were also intact and tallied with the specimen impression of seal given on copy of memorandum forwarded separately."

7. Learned Advocate further submitted that on receiving an application for forwarding the sample to the Central Food Laboratory, it is necessary for the Court to call for the sample from the Local (Health) Authority, and on receipt of the part of the same from the Local (Health) Authority, the Court has to ascertain that the mark and seal or fastening as provided in clause (b) of s/s 1 of Section 11 of the Act are intact and the signature or thumb impression, as the case may be, is not tampered with. After satisfying this, the Court has to despatch the part of the sample under its own seal to the Director of Central Food Laboratory. In the instant case, there is nothing to indicate that the trial Court has followed the procedure as stated hereinabove. This Court could have, with the aid of section 114 (e) of the Evidence Act, presumed the procedure to have been followed, but in the instant case, there is nothing on the record to show that the Court while forwarding the sample has forwarded separately the memorandum to the Director of Central Food Laboratory in Form I. Rule 4 (1)(a) of the Rules contemplates that the sample of food for analysis under sub-section (2) of section 13 of the Act shall be sent either through a messenger or by registered post in a sealed packet, enclosed together with a memorandum in Form I in an outer cover addressed to the Director. Sub-rule (2) of Rule 4 requires that the container as well as the outer covering of the packet shall be marked with a distinguishing number. Under section 13 (2.B), duty is cast upon the Court to ascertain that mark and seal or fastening as provided in clause (b) of sub-section 1 of section 11 are intact and the signature or thumb impression as the case may be, is not tampered with. The legislature provided that after verifying these aspects the Court has to dispatch the part, or as the case may be, one of the parts of the

sample under its own seal to the Central Food Laboratory. The Court has to forward a copy of the memorandum and specimen impression of the seal used to seal the container separately by registered post to the Director under sub-clause (3) of Rule 4. Duty is cast on the Director or the officer authorised by him to compare the seals on the container and the outer cover with specimen impression received separately and also to note the condition of the seals thereon. In the instant case, as stated in the foregoing paragraph it is mentioned in the analysis report of the Central Food Laboratory that the seals were intact and tallied with the specimen impression. It is clear that Form No. VII was forwarded. Form No. VII in accordance with rule 17 is required to be forwarded to the Public Analyst by the Food Inspector concerned and not by the Judicial Magistrate First Class. Mr. Vora submitted that if the report would have indicated that the the Central Food Laboratory received the memorandum separately in Form I, then certainly this Court can draw a presumption that memorandum was forwarded separately and with specimen impression of the seal used to seal the container. However, in the absence of any material on record to indicate that the Court forwarded sample under its own seal or forwarded memorandum as contemplated under rule 4 (1) of the Rules, it would not be possible to come to a conclusion that the Court forwarded the sample under its own seal. It appears that breach of Sec. 13 (2B) is committed insofar as forwarding the sample under Court's seal is concerned. Central Food Laboratory in its report has referred to Form No. VII, but not Form No. I, and therefore, under this circumstances, it is not possible to say that while forwarding the sample, the Court forwarded the same under its own seal. In the case of BHAGWANDAS GURNOMAL vs. STATE reported in 16 GLR 164, learned Single Judge referred the matter to a larger Bench wherein four issues were raised, one of which reads as under :-

"Whether sub-rule (3) of Rule 4 imposes a statutory obligation on the learned Magistrate to send to the Director of Central Food Laboratory, a copy of the memorandum along with the specimen of the seal of the food inspector used to seal the container or along with the seal of the Magistrate only?".

7.1 The Division Bench, after considering in detail relevant provisions of the ACT and the Rules, held that "Justice must also appear to be done, and, therefore the only interpretation that can be put on the mandatory

provision of sec. 13 (2) and relevant rule 4 (3) is that the Court's seal has to be applied both to the container and the paper cover and it is the specimen impression of the Court seal which has to be sent separately by registered post to the Director along with a copy of memorandum under rule 4 (3). That is why even the memorandum in Form.I in terms provides that a copy thereof and a specimen impression of seal used on the container and the cover by the court shall be sent separately by registered post. That seal is clearly court's seal within the meaning of sec. 13 (2) and Rule 4 (3)."

7.2 It is clear that there is nothing to indicate that court applied its own seal after ascertaining the facts that seal was in tact and there was no tampering with signature or thumb impression. Record indicates that court merely forwarded the sample with the memorandum having a seal of the Food Inspector. In view of this, no reliance can be placed on the certificate.

8. So far as the question with regard to dry and clean bottles not used by the Food Inspector is concerned, Mr. Vora invited the attention of the Court to the evidence wherein the Food Inspector has stated that the sample was poured in three dry and clean bottles. However, in the cross examination, the Food Inspector has stated as under:-

"Bottle, sample bottles were _____ before eight days. For about eight days were lying in my custody in the office."

8.1 The original record is perused by the Court. In the original record, evidence recorded in Gujarati, reads as under :

"Batli, sampleni bottlo officema aat divas agavu
----- karel"

8.2 Reading the evidence, what appears is that some action is taken before eight days - whether the action was of cleaning the bottles or purchasing the bottles before eight days, is not known. In the absence of specific word, the Court cannot put in the mouth of the witness though the witness has not stated it. It may be a bonafide mistake of the person while recording the evidence. This is the second case which I have come across while dealing with food adulteration cases in this session where the evidence is not properly taken down, and for that reason, the accused are required to be

acquitted. In the earlier case, (Criminal Appeal No 50 of 1991 decided on 17.9.1998/18.9.1998), it is pointed out by this Court that it is the duty of the trial Court to see that evidence is read over to the witness.

9. Mr. Vora submitted that a specific question was put about the cleaning of the bottles, but there is no answer by the witness and what is stated is that the bottles were lying in his custody for eight days. Therefore, the bottles were cleaned or not, is not established by the prosecution. He further submitted that the Food Inspector has not stated that he himself has cleaned it or under his supervision the bottles were cleaned and thereafter, the bottles were properly kept. It is required to be noted that duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence at the trial Court that the bottles used were clean and dry. In the case of M.B. RISALDAR VS. RADHESHYAM reported in 21 (2) GLR 136, this Court has observed as under :-

"Even I feel that when a witness testifies to the effect that the glass bottles were cleaned and dried, a mere visual appearance to the naked eye may not be sufficient sometimes. If no questions might have been put to him as to how he can say that the glass bottles were cleaned and dried, probably the matter would have ended there. But he has given out that the peon had cleaned and dried the bottles and put them into the cupboard. In this state of the evidence, it was the duty of the prosecution to examine that peon to show that bottles were properly cleaned and dried and they were put into the cupboard and properly closed."

9.1 In the instant case, if in the evidence the words would have been to the effect that the bottles were cleaned before eight days, and were kept in the cupboard, the Court would not have any hesitation in accepting the same, but as the sentence is not correctly written, it is difficult to say whether it refers to 'purchasing' or 'cleaning' of the bottles. Therefore also, the benefit should go to the accused.

In the result, the appeal is dismissed.

csm./ -----